THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.29060 of 1995

Dated this the 10th day of March, 2006

Between:

M/s. Shriram Refrigeration Industries,

Balanagar Township, Hyderabad,

rep.by its Dy. General manager – Materials,

Attorney Holder Sri Dinesh Vijapurkar

…. **Petitioner**

and

1. Additional Industrial Tribunal-cum-

   Additional Labour Court, 1st floor,

   Chandra vihar, M.J. Road,

   Hyderbaad, rep.by its Chairman,

   and others …. **Respondents**

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.29060 of 1995

ORDER:

This is a Writ of Certiorari filed by the petitioner to call for the records and quash the Award in I.D.No.459 of 1993, dated 28-09-1995 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short 'the Tribunal').

The petitioner is the Management and the second respondent is the workman. The

petitioner is having a Factory at Balanagar, Hyderabad and is engaging in manufacture and sale of Hermetically Sealed Compressors and Water Coolers.

The second respondent was employed as a Sepoy in Security Department of the factory of the petitioner. The Management introduced a Voluntary Retirement Scheme, through the order, dated 09-05-1991. As per the Voluntary Retirement Scheme, an option was given to the employees to whom the scheme was applicable to make an application to retire from service voluntarily and in such an event, the Company offered to pay certain benefits to the employees. The Voluntary Retirement Scheme was initially made applicable from 09-05-1991 to 31-07-1991 and thereafter the same was extended from time to time. The said scheme was applicable only for the staff members and workmen, who were on rolls company on permanent basis. The second respondent made an application on 29-09-1992 seeking to retire voluntarily and the said application was accepted by the Management and communicated to him on 01-10-1992. The second respondent was further informed that he would be relieved from service after working ours on 03-10-1992. Accordingly, the second respondent was relieved from service and he also received an amount of Rs.40,844/- on 09-10-1992 towards full and final settlement of the account, which includes ex-gratia payable under the said scheme, gratuity and other amounts. He also received a Service Certificate, dated 03-10-1992 on 09-10-1992. After taking the benefits of the voluntary scheme, the second respondent filed I.D.No.459 of 1993 under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Tribunal alleging that he was terminated from services illegally and the Management forcibly obtained the application from him under Voluntary Retirement Scheme. The Tribunal passed the Award, dated 28-09-1995 reinstating the second respondent with back wages and all other benefits. The Tribunal further held that the second respondent is liable to pay an amount of Rs.40,844/- with interest at the rate of 12% per annum from 09-10-1992 and the Management can adjust the back wages payable to him. Aggrieved by the said Award, the Management filed the present writ petition seeking the relief mentioned above.

The second respondent filed counter affidavit alleging that the contentions of the Management are contrary to the conditions of the Voluntary Retirement Scheme. The application for Voluntary Retirement Scheme should be unconditional and if any conditions are contained, it is liable to be rejected.

It contains the condition of granting extra salary of six months over and above offered under the Scheme. The language of the application amounts to a counter offer and against that application there is a fresh offer granting four months salary over and above the entitlement under the Scheme. There is no unconditional application to opt Voluntary Retirement Scheme and it could not have been pursued and ultimately it could not be accepted as done by the Management. The voluntary retirement proceedings are vitiated by coercion and undue influence by the Management. The Management called from night shift to general shift for no valid reason except to pressurize him to opt for the retirement scheme. The rapid action launched against him did not allow him to have breathing time to protest on the spot coupled with ill-health, threat of transfer to Itava in Uttar Pradesh, called back from leave, rejection of leave application, keeping him without work and detain him late hours in the evenings. The cancellation of leave and calling back a sick person to the duty in September 1992 through telegram, dated 26-09-1992 is an element of creating frustration.

The Management prevailed on him to retire and another Sepoy by name Sri Subramanya swamy to get rid of the seniors, who are drawing higher pay and to appoint new persons on lesser wages. As the Voluntary Retirement Scheme floated earlier is totally failed, the Management floated another scheme from 20-12-1992. Therefore, the petition is liable to be dismissed.

The Management specifically pleaded that when the company floated a scheme of voluntary retirement, the second respondent voluntarily made an application and that was accepted and the retirement benefits were also paid to him through a cheque, which was withdrawn by him and he also received the service certificate. Therefore, the question of illegal termination of the second respondent does not arise.

The second respondent contended that he was coerced to make an application and made to resign due to harassment caused to him. Though the second respondent averred in the counter that he has been made to retire voluntarily against his will, nothing prevented him to make an application either before his leaving the company or before receipt of the retirement benefits or the service certificate.

The learned counsel for the Management submitted that not only the second respondent, but also thousands of workers took voluntary retirement. Out of them except two persons, all other persons have taken retirement benefits and left the

service voluntarily. He further submitted that there is no necessity for the Management to coerce the second respondent to make an application or forcibly obtaining the application for voluntary retirement. If that is the case, the second respondent would have created a big scene by approaching the Workers Union and the authorities concerned that an application was obtained forcibly from him. The counter affidavit filed by the second respondent is very vague and there is no definite denial of either making a voluntary application or receiving the retirement benefits or receiving the service certificate. There is no other proof to show that the second respondent was compelled to make an application for voluntary retirement to send him away from service. In the absence of specific averments coupled with the documentary proof, the plea of the second respondent cannot be accepted.

The Tribunal while appreciating the evidence observed that the Management intended to retrench the senior security guards, who are drawing higher wages and employ security guards afresh on lesser wages and thus save money. The Management introduced Voluntary Retirement Scheme on 09-05-1991 and the scheme was valid up to 31-07-1991. No workman applied within the period. Thereafter, the Management was accepting the offers of the workmen to retire voluntarily, issuing proceedings, paying money and retiring the employees, who opted for the same, though the period of the scheme expired. The scheme was extended until further advise on 21-07-1992. The 10 workers including the second respondent offered to take voluntary retirement in between 12-10-1991 and 20-09-1992 and their offer was accepted. Similarly, 22 workers opted for voluntary retirement and the Management resisted their applications. The Tribunal further observed that the version of the workman is that the Management having found no response to its voluntary retirement scheme pressurized him to take voluntary retirement by means of threatening him to transfer to Itava in Uttar Pradesh, by not sanctioning his leave and by threat of dismissal.

The learned counsel for the second respondent contends that the Management announced another scheme on
26-10-1992 with further incentives, as the response for the first scheme was negligible compared to the thousand and odd workers employed by the Management. The employees, who opted for the second scheme, got more money, but the second respondent got lesser money by opting the first voluntary retirement scheme. He further contends that his leave was refused and he was transferred to

Itava in Uttar Pradesh.

He was, therefore, threatened to accept the scheme. Due to the above acts of the Management, the Tribunal accepted the contention of the workman and passed the impugned order.

The Tribunal taken an extreme view that in view of transfer to Itava in Utta Pradesh and in view of refusal to grant leave and in view of directing the second respondent to go to Company doctor, an inference can be drawn that he was coerced and forced to resign from the job by way of voluntary retirement application. The further contention of the second respondent is that he was retrenched under the Act, but there is no material to show that he was removed from service illegally, which amounts to retrenchment.

On the other hand, the record placed before the Tribunal, is clearly established that if the second respondent voluntarily made an application without any coercion or undue influence, which was accepted by the Management after some time, it is only after lapse of several months, he approached the Tribunal contending that it amounts to retrenchment. But, there is no material to show that the Management obtained the application for voluntary retirement scheme forcibly and accepted the same without consent of the second respondent, therefore, the order of the Tribunal is liable to be set aside.

The second respondent, during the pendency of the writ petition, died and his legal representatives were brought on record. In view of the findings of this Court that the Award passed by the Tribunal is liable to be set aside, they are not entitled for any benefits of voluntary retirement on account of the death of the second respondent.

Accordingly, the Writ Petition is allowed and the impugned Award dated 28-09-1995 is set aside. The amounts, if any, received by the deceased-workman (R-2) cannot be recovered. No order as to costs.

Dr.G. YETHIRAJULU, J

Date: 10--03--2006

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